PRIVY COUNCIL REPORT

[PRIVY COUNCIL]

LORDS ATKIN, THANKERTON, WRIGHT AND PORTER AND SIR GEORGE RANKIN.

January 20, 1939.

PAKALA NARAYANA SWAMI.....Appellant

v.

KING-EMPEROR .....Respondent

Indian Code of Criminal Procedure, S. 162 (1) as amended by S. 34 of the Code of Criminal Procedure Amendment Act, 1923 — statement obtained from accused before arrest—admissibility of.

Indian Evidence Act, 1872, S. 32 (1)—statement by deceased person—"circumstances of the transaction"—limitations of.

On the 23rd of March, 1937, the body of a deceased Indian one Kurree Nukaraju was found in a steel trunk in a third class compartment at Puri, the terminus of a branch line on the Bengal Nagpur railway, where the trunk had been left unclaimed. The body had been cut into seven portions and the medical evidence left no room for doubt that the deceased had been murdered. Police suspicion fell on the accused and his household and during the investigation held in his house the accused made a statement to the Police that the deceased had come to his house on the 21st March, slept in one of the outhouse rooms for the night, and left on the evening of the 22nd March by a passenger train. The alleged statement, objected to by the defence, was admitted by the Courts below. Apart from this statement, there was ample other evidence that a trunk had been bought by order of the accused and taken to his house on the 22nd March, and that on the 23rd March that trunk, containing the body of the deceased, was placed on a train at the station of Berhampur, having been conveyed thither in a vehicle ordered by the accused, in which he and the trunk travelled to the station. The widow of the deceased also made a statement that on the 20th March the deceased had told her that he was going to Berhampur, as the accused's wife had written and told him to go and receive payment of his dues. The appellant was charged with and convicted of murder and sentenced to death by the Sessions Judge at Berhampur. On appeal the High Court of Patna upheld the conviction. The appellant appealed to the Privy Council by special leave.

Held, that the statement obtained by the Police from the accused before arrest was wrongly admitted in evidence by reason of Section 162 of the Code of Criminal Procedure, as amended and substituted by S. 34 of Code of Criminal Procedure Amendment Act, 1923, and that, though the statement was rejected, the presence of the deceased at the accused's house, a fact which alone the statement sought to establish, was sufficiently proved by other evidence and that in the circumstances of this case it was impossible to say that the proceedings resulted in a failure of justice.

Held further, that the statement made by the deceased that he was setting out to the place where the accused lived, and to meet the wife of the accused who lived in the accused's house was rightly admitted as being a statement as to some of the circumstances of the transaction which resulted in his death within the meaning of Section 32 (1) of the Indian Evidence Act, 1872.

D. N. Fritt, K.C. and *H. W. Williams*, for the Appellant.

G. D. Roberts, K.C., W. Wallach and J. Megaw, for the Respondent.

The judgment of the Judicial Committee was delivered by—

LORD ATKIN:—This is an appeal by special leave from a judgment of the High Court of Patna, who affirmed the decision of the sessions judge at Berhampur who had convicted the appellant of the murder of one Kurree Nukaraju and sentenced him to death. The accused, his wife's brother, and his clerk living at his house were charged with the murder before the subdivisional magistrate, Chatrapur, in May and June, 1937. After hearing the evidence, the examining magistrate discharged all the accused, holding that there was no sufficient evidence to to support the charge. Thereupon the sessions judge at Berhampur, exercising his powers under the code of Criminal Procedure, called upon the accused to show cause why they should not be committed for trial, and in July, 1937, ordered the present accused and his wife to be committed to the Court of Sessions to stand their trial for offences under the Criminal Code, sects. 120 B. (conspiring to murder), 302 (murder), and 201 (causing evidence of an offence to disappear). At the trial, the sessions judge acquitted the appellant's wife of all the charges, but convicted the appellant of murder, and sentenced him to death. The appeal is based upon the admission of certain evidence said to be made inadmissible by provisions of the Code of Criminal Procedure and the Evidence Act, and is further maintained upon the contention that, whether the disputed evidence be admitted or not, and certainly if it ought to have been rejected, there is no evidence sufficient to support this conviction.

On Tuesday, March 23, 1937, at about noon, the body of the deceased man was found in a steel trunk in a third-class compartment at Puri, the terminus of a branch line on the Bengal Nagpur railway, where the trunk had been left unclaimed. The body had been cut into seven portions, and the medical evidence left no doubt that the man had been murdered. A few days elapsed before identification, but eventually the body of the deceased was identified by his widow. He was a man of about 40, and had been married about 22 years. He had been a peon in the service of the Dewan of Pithapur, one of whose daughters was the wife of the accused. It was suggested by the prosecution that before her marriage, and about 19 years before the events in question, the wife of the accused, then a girl of about 13, had had

an intrigue with the deceased. Four letters were produced by the deceased's widow purporting to be signed by the girl, bearing date 1918, supporting this suggestion. The judge was not satisfied with the evidence of handwriting, there was no other evidence worth considering in support, and this suggested motive must be definitely rejected. The fact, however, remains that the deceased was in possession of these four documents purporting to be signed by the wife of the accused. About 1919, the accused and his wife were married. They went to live at Berhampur, about 250 miles from Pithapur. About 1933, they returned to Pithapur, where they appear to have stayed with her father. They seem at that time to have been in need of money, and during 1936 the accused's wife borrowed from the deceased man at various times, and in relatively small sums, an amount of Rs. 3,000, at interest at the rate of 18 per cent. per annum. About 50 letters and notes proving these transactions, signed by the accused's wife, were found in the deceased man's house at Pithapur after his death. On Saturday, March 20, 1937, the deceased man received a letter the contents of which were not accurately proved, but which, it was reasonably clear, invited him to come that day or next day to Berhampur. It was unsigned. The widow said that on that day her husband showed her a letter and said that he was going to Berhampur, as the appellant's wife had written to him and told him to go and receive payment of his due. The evidence was objected to. It was admitted as falling under the provisions of the Indian Evidence Act, 1872, s. 32 (1). The admission of this evidence is one of the grounds of the appeal, and will be discussed later. The deceased left his house on Sunday, March 21, in time to catch the train for Berhampur. On Tuesday, March 23, his body was found in a trunk in the train at Puri, as already stated.

Police suspicion does not appear to have been directed against the accused and his household until April 4, on which date the police visited the house, examined the inhabitants, and obtained a statement from the accused the admissibility of which is one of the principal grounds of the appeal. They searched the premises, as is said, for incriminating documents only, and in the afternoon arrested the four persons already mentioned. In addition to evidence of the facts above stated, the prosecution adduced the evidence of two employees in a shop at Berhampur where trunks were made and sold, who gave evidence that on Monday, March 22, in the afternoon, the dhobie, or washerman, of the accused called at the shop and ordered a trunk, and that a trunk was taken to the accused's house and shown to him and his wife. It was rejected as being too large, and a smaller one, of the size of the trunk in question, was then delivered to the dhobie at the shop, and he took it away. The transaction was entered in the rough day-book and in the fair-copy book of the shop as of the day in question, and, though the trial judge thought that the entry had been tampered with so as to insert the height of the trunk, the trial judge and the High Court, both of whom inspected the entries, were satisfied that they genuinely established the sale of such a trunk on that day. The witnesses identified the trunk in which the body was found as being the trunk of their manufacture which was sold in the circumstances stated on the Monday afternoon. The dhobie was called, and proved the purchase of a trunk after the rejection by the accused of the first one brought from the shop. He, however, placed the date as being on a Saturday. The judge thought that his evidence was unreliable, and said that he ignored it. He found, however, that the sale of the particular trunk was proved to have taken place, as stated by the witnesses, on Monday, March 22. The prosecution then sought to prove that the accused took the trunk to the train in which it was found on Tuesday, March 23. Evidence was given by a jetka driver, who lived near the accused, that, early in the morning, some four months before the trial, the accused had come to his house and said he wanted a jetka, that he drove to the accused's house, where a trunk which was like the trunk in question was loaded on the jetka, and that he drove the accused with the trunk to the station, where the trunk was unloaded and taken into the station. The evidence was corroborated by a man who ran alongside the jetka in charge of the horse, which was fresh. The defence relied strongly on statements made by both these witnesses on cross-examination that they remembered that the occasion was a Saturday as it was a *Shandy* (fair) day at Berhampur. Both courts accepted the evidence as relating to the carriage of this trunk on March 23. They thought that the difference as to date was an inaccuracy due to a *bona fide* mistake. A witness of repute spoke to seeing the accused at the station on the morning of March 23, when the train on which the trunk was found arrived. He could not say that he saw the accused enter the train. When the accused was examined by the police at his house on April 4, it is alleged that he made the statement which the defence sought to have rejected, and which must be further discussed. The alleged statement was that the deceased had come to his house on the evening of March 21, slept in one of the outhouse rooms for the night, and left on the evening of March 22 by the passenger train, that on the morning of March 23 the accused went to the station with Gangulu (the jetka driver) on his jetka, and went off by the passenger train to Chatrapur on some private business with one Delhi Chiranjivirao, and, hearing at the Chatrapur station that this man was away, he returned by the Vizagapatam passenger

train as far as Jagannadhnpur, whence he went to Narendrapur to see on Juria Naiko. He, too, was absent, so the accused returned to Berhampur by jetka. This statement was obviously important, for it admitted that the murdered man arrived at the accused's house on March 21. Both courts admitted it. Their Lordships are of opinion that it should have been rejected, for reasons that will be given later. The accused and the other three members of his household were arrested on April 4, and the house remained unoccupied. On April 7, a further search of the premises was made by the police, and a bundle of rags which apparently had been washed but contained bloodstains was found buried at a depth of about 18 ins. in the compound. Some rags, also bloodstained, but still damp, were found in a box in the bathroom. The trial judge accepted this evidence. On appeal, both of the judges thought that the articles found were not on the premises when the police searched on April 4. Manoher Lall, J., thought that the discovery was made in highly suspicious circumstances, and that no inference should be drawn against the accused in respect of it. In this state of the case, their Lordships think that it would be unsafe to rely upon the discoveries on April 7. Before the examining magistrate, the accused's statement was that he was not guilty. He had come to Berhampur on March 17 in connection with a lawsuit, of which he gave some particulars. He neither purchased the trunk through the washerman nor took it to any place in any jetka. The deceased never came to his house at anytime in March, 1938. He did not know the deceased. At the trial, he said that the statement he had made in the lower court was correct. When asked by the judge whether he could suggest any reason why so many witnesses should come and give evidence against him. he said: "The witnesses are mistaken, and the police are suffering from excessive zeal."

The first question with which their Lordships propose to deal is whether the statement of the widow—that on March 20 the deceased had told her that he was going to Berhampur, as the accused's wife had written and told him to go and receive payment of his dues—was admissible under the Indian Evidence Act, 1872, s. 32 (1). That section provides as follows:—

> Statements written or verbal of relevant facts made by a person who is dead.....are themselves relevant facts in the following cases (1) when the statement is made by a person as to the cause of his death or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question.
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> Such statements are relevant whether the person who made them was or was not at the time when they were made under expectation of death and whatever may be the nature of the proceeding in which the cause of his death comes into question.

A variety of questions as to the effect of this section has been mooted in the Indian Courts. It has been suggested that the statement must be made after the transaction has taken place, that the person making it must be at any rate near death, and that the "circumstances" can only include the acts done when and where the death was caused. Their Lordships are of opinion that the natural meaning of the words used does not convey any of these limitations. The statement may be made before the cause of death has arisen, or before the deceased has any reason to expect to be killed. The circumstances must be circumstances of the transaction. General expressions indicating fear or suspicion, whether of a particular individual or otherwise, and not directly related to the occasion of the death, will not be admissible. However, statements made by the deceased that he was proceeding to the spot where he was in fact killed or as to his reasons for so proceeding, or that he was going to meet a particular person, or that he had been invited by such person to meet him, would each of them be circumstances of the transaction, and would be so whether the person was unknown, or was not the person accused. Such a statement might indeed be exculpatory of the person accused. "Circumstances of the transaction" is a phrase, no doubt, that conveys some limitations. It is not as broad as the analogous use in "circumstantial evidence", which includes evidence of all relevant facts. It is, on the other hand, narrower than *res gestae*. Circumstances must have some proximate relation to the actual occurrence, thoughas, for instance, in a case of prolonged poisoning—they may be related to dates at a considerable distance from the date of the actual fatal dose.

It will be observed that "the circumstances" are those of the transaction which resulted in the death of the declarant. It is not necessary that there should be a known transaction other than that the death of the declarant has ultimately been caused, for the condition of the admissibility of the evidence is that "the cause of (the declarant's) death comes into question". In the present case, the cause of the deceased's death comes into question. The transaction is one in which the deceased was murdered on March 21 or March 22, and his body was found in a trunk proved to be bought on behalf of the accused. The statement made by the deceased on March 20 or March 21—that he was setting out to the place where the accused lived, and to meet a per-

son, the wife of the accused, who lived in the accused's house—appears clearly to be a statement as to some of the circumstances of the transaction which resulted in his death. The statement was rightly admitted.

It is now necessary to discuss the question whether the alleged statement of the accused to the police before arrest was protected by the Code of Criminal Procedure, s. 162 (1), which provides as follows:—

> No statement made by any person to a police officer in the course of an investigation under this chapter shall if reduced into writing be signed by the person making it: nor shall any such statement or any record thereof whether in a police diary or otherwise or any part of such statement or record be used for any purpose (save as hereinafter provided) at any inquiry or trial in respect of any offence under investigation at the time when such trial was made.

This section, which, in its amended form, was substituted for the original section by the Code of Criminal Procedure Amendment Act, 1923, s. 34, has been the subject of repeated decisions in the High Courts of India, and has given rise to a distinct cleavage of opinion. The majority of the High Courts held that it has no application to a statement made by a person who, at the time it is tendered in evidence, is an accused person. The minority have held that there is no such limitation. Their Lordships have been referred to at least twelve reported cases, all of which, with others they have considered. The representative opinions on either side may be taken to be *King-Emperor* v. *Azimuddy*, (1926) I.L.J.R., 54 Cal. 237, in a judgment of Rankin, J., (as he then was), admitting such a statement against the accused, and *King-Emperor* v. *Syamo*, (1932) I.L.R., 55 Mad. 903, in a judgment of Reilly, J., sitting in a full Bench of the High Court of Madras, rejecting the statement. The present Board have had the advantage of the presence of Sir George Rankin in giving a full consideration to all the reported decisions, and they have come to the conclusion that the words of the section lead to the conclusion that the statement is not admissible, even when made by the person ultimately accused.

The reference in the section to "this chapter" is to the group of sections beginning with chapter XIV forming Part V of the code entitled "Information to the police and their powers to investigate". After giving powers to certain police officers to investigate certain crimes, the code proceeds in sect. 160 to give power to any police officer making an investigation by an order in writing to require the attendance before himself of persons who appear to be acquainted with the circumstances of the case. By sect. 161, any policeman making an investigation under the chapter may examine orally any person supposed to be acquainted with the facts and circumstances of the case, and such person shall be bound to answer all questions put to him other than those the answers to which may tend to incriminate him. Then follows the section in question, which is drawn in the same general way relating to "any person". That the words in their ordinary meaning would include any person though he may thereafter be accused seems plain. Investigation into crime often involves the examination of a number of persons none of whom or all of whom may be suspected at the time. The first words of the section prohibiting the statement, if recorded, from being signed must apply to all the statements made at the time, and must, therefore, apply to a statement made by a person possibly not then even suspected, but eventually accused. "Any such statement" must, therefore, include such a case, and it would appear that, if the statement is to be admitted at all, it can only be by limiting the words "used for any purpose" by the addition of such words as "except as evidence for or against the person making it when accused of an offence". If such an exception were intended, one would expect to find it expressed, and their Lordships cannot find sufficient grounds for so departing from the plain words used. If one had to guess at the intention of the legislature in framing a section in the words used, one would suppose that they had it in mind to encourage the free disclosure of information, or to protect the person making the statement from a supposed unreliability of police testimony as to alleged statements or both. In any case, the reasons would apply, as might be thought, *a fortiori* to an alleged statement made by a person ultimately accused. In truth, however, when the meaning of words is plain, it is not the duty of the courts to busy themselves with supposed intentions. As was said by Lord Wensleydale in *Grey* v. *Pearson* (1857), 6 H.L. Cas. 61 at p. 106:—

> I have been long and deeply impressed with the wisdom of the rule, now, I believe, universally adopted, at least in the Courts of law in Westminster Hall, that in construing wills and indeed statutes, and all written instruments, the grammatical and ordinary sense of the words is to be adhered to, unless that would lead to some absurdity, or some repugnance or inconsistency with the rest of the instrument, in which case the grammatical and ordinary sense of the words may be modified, so as to avoid that absurdity and inconsistency, but no farther.

Words to the same effect were used by Lord Halsbury, L.C., in *Income Tax Special Purposes Comrs.* v. *Pemsel* (1891), A.C. 531 at pp. 542, 543:—

> My Lords, to quote from the language of Tindal, C.J., when delivering the opinion of the judges in the *Sussex Peerage Case* (1844), 11 Cl. & Fin. 85 at p. 143: "The only rule for the construction of Acts of Parliament is, that they should be construed according to the intent of the Parliament which passed the Act. If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves alone do in such case best declare the intention of the lawgiver. But if any doubt arises from the terms employed by the legislature, it has always been held a safe means of collecting the intention, to call in aid the ground and cause of making the statute, and to have recourse to the preamble, which according to Dyer, C.J. (*Stowel* v. *Zouch* (*Lord*) (1569), 1 Plowd.353 at p. 369), is a key to open the minds of the makers of the Act, and the mischiefs which they are intended to redress."

In this case, the words themselves declare the intention of the legislature. It therefore appears inadmissible to consider the advantages or disadvantages of applying the plain meaning, whether in the interests of the prosecution or in those of the accused. It would appear that one of the difficulties that has been felt in some of the courts in India in giving the words their natural construction has been the supposed effect on the Indian Evidence Act, 1872, ss. 25, 26, 27. Sect. 25 provides that no confession made to a police officer shall be proved against an accused. Sect. 26 provides that no confession made by any person whilst he is in the custody of a police officer shall be proved as against such person. Section 27 is a proviso that, when any fact is discovered in consequence of information received from a person accused of any offence whilst in the custody of a police officer, so much of such information, whether it amounts to a confession or not, may be proved. It is said that to give section 162 of the code the construction contended for would be to repeal section 27 of the Evidence Act, for a statement giving rise to a discovery could not then be proved. It is obvious that the two sections can, in some circumstances, stand together. Section 162 is confined to statements made to a police officer in course of an investigation. Section 25 covers a confession made to a police officer before any investigation has begun, or otherwise not in the course of an investigation. Section 27 seems to be intended to be a proviso to section 26, which includes any statement made by a person whilst in custody of the police, and appears to apply to such statements to whomsoever made—for example, to a fellow-prisoner, a doctor or a visitor. Such statements are not covered by section 162. Whether to give to section 162 the plain meaning of the words is to leave the statement still inadmissible, even though a discovery of fact is made, such as is contemplated by section 27, it does not seem necessary to decide. In the present case, the declarant was not in the custody of the police, and no alleged discovery was made in consequence of his statement. The words of section 162 are, in their Lodships' view, plainly wide enough to exclude any confession made to a police officer in course of investigation, whether a discovery is made or not. They may, therefore, *pro tanto* repeal the provisions of the section which would otherwise apply. If they do not, presumably it would be on the ground that section 27 of the Evidence Act is a "special law" within the meaning of the Code of Criminal Procedure, s. 1 (2) and that section 162 is not a specific provision to the contrary. Their Lordships express no opinion on this topic, for, whatever be the right view, it is necessary to give to section 162 the full meaning indicated. It only remains to add that any difficulties to which either the prosecution or the defence may be exposed by the construction now placed on section 162 can in nearly every case be avoided by securing that statements and confessions are recorded under section 164.

In view of their Lordship's decision that the alleged statement was inadmissible by reason of section 162, the appellant's contention that it was inadmissible as a confession under section 25 of the Evidence Act becomes unnecessary. As the point was argued, however, and as there seems to have been some discussion in the Indian courts on the matter, it may be useful to state that, in their Lordships' view, no statement that contains self-exculpatory matter can amount to a confession if the exculpatory statementt is of some fact which, true, would negative the offence alleged to be confessed. Moreover, a confession must admit in terms either the offence, or, at any rate, substantially all the facts which constitute the offence. An admission of a gravely incriminating fact, even a conclusively incriminating fact, is not of itself a confession-for example, an admission that the accused is the owner of, and was in recent possession of, the knife or revolver which caused a death, with no explanation of any other man's possession. Some confusion appears to have been caused by the definition of confession in Stephen's Digest of the Law of Evidence, art. 22, which defines a confession as an admission made at any time by a person charged with a crime stating, or suggesting the inference, that he committed that crime. If the surrounding articles are examined, it will be apparent that the author, after dealing with admissions generally, is applying himself to admissions

in criminal cases, and for this purpose defines confessions so as to cover all such admissions, in order to have a general term for use in the three following articles—confession secured by inducement, made upon oath, made under a promise of secrecy. The definition is not contained in the Evidence Act, 1872, and in that Act it would not be consistent with the natural use of language to construe confession as a statement by an accused "suggesting the inference that he committed" the crime.

The statement of the accused has now been held to have been wrongly admitted. What effect should that have on the appeal? Mr. Pritt, for the appellant, forcibly argued that the trial judge relied on the statement as sufficient evidence in itself to show that the deceased man arrived at the accused's house on the night of March 21, and that, when that evidence failed, there was not sufficient evidence to support a conviction for murder. Their Lordships cannot take that view. For this purpose, they will be content to abide by the rule governing the Patna High Court expressed in the Code of Criminal Procedure, s. 537:—

> No finding sentence or order passed by a court of competent jurisdiction shall be reversed.....on appeal.....on account of any error in the judgment or other proceedings during trial.....unless such error has in fact occasioned a failure of justice.

They will for this case adopt this rule, though it probably is wider than the rules which this Board has laid down for the exercise of their powers in dealing with criminal appeals. It will be observed that the sole effect of the disputed statement was to supply the prosecution with evidence of the material fact that the deceased reached the accused's house at the critical time. However, though this evidence be rejected, there is other evidence of everwhelming strength to the same effect. It must be taken to have been proved that a trunk was bought by order of the accused and taken to his house on the afternoon of March 22. At about 6 a.m. on March 23, that trunk, containing the body of the deceased, was placed on the train at the station of Berhampur, having been conveyed there in a vehicle ordered by the accused, in which he and the trunk travelled to the station. The deceased had, on the day before, set out from his house for the express purpose of visiting the accused's house.

In these circumstances, there is ample evidence of the presence of the deceased at the accused's house—the fact which alone the statement sought to establish. Faced with this difficulty, Mr. Pritt sought to establish that in no case, whether the statement were rejected or admitted, was there sufficient evidence of his client's guilt. The facts were consistent, he said, with the accused being merely an accessory after the fact to a murder to which he was no party. Their Lordships are unable to say that there was not ample evidence upon which the judge of fact could properly convict of murder. The accused man was found to have been in possession of a trunk in which was the mutilated body of a man recently murdered, a trunk which he purchased a little more than 12 hours before it was placed in the train. He gave no explanation, and contented himself with a denial that he knew the man, or that the man had visited his house, or that he had seen the trunk. All these statements were untrue. In these circumstances, it is impossible to say that the proceedings which ended with a conviction for murder resulted in a failure of justice. For these reasons, the appeal should be dismissed, and their Lordships will humbly advise His Majesty accordingly.

Appeal dismissed.

Hy. S. L. Polak & Co., Solicitors for the appellant.

The Solicitor, India Office for the respondent.